

CANVASSING



KANSAS

AN UPDATE ON ELECTION NEWS IN KANSAS

Status of Federal Election Reform

Although the principal players in federal election reform are reportedly still committed to producing a bill, the negotiators on the congressional conference committee have thus far been unable to agree on some basic issues.

As reported in an earlier edition of this newsletter (see *Canvassing Kansas*, March 2002, page 1), in 2001 the U.S. House of Representatives and U.S. Senate passed different bills attempting to improve election procedures in the wake of the problems highlighted by the 2000 presidential election in Florida.

Because the bills were different, a conference committee was appointed and charged with the task of negotiating the differences and producing a compromise bill that could pass both houses of Congress and go to the president for his signature.

Staff members of both political parties in the House and Senate met with state and local election officials on August 16 and 17 at the summer conference of the Election Center and the National Association of State Election Directors in San Antonio, Texas.

The staff members, who are personally involved in the conference committee negotiations, reported that the members of Congress remain committed to passing election reform legislation, but so far their efforts have not produced a unified bill.

A major push was made in late July to reach an agreement before Congress adjourned for its August break, but July 31 came and went with no agreement. When members of Congress return to Washington in late August, there will be a window of several weeks for the conference com-

mittee to complete its work and produce a bill for both houses to vote on, or the opportunity might be lost.

Of course the final wording of the bill, if a bill passes, is not known yet, but it will include rules for identification of certain voters at the polls, provisional voting, notices to provisional voters after the election, voting by disabled persons, and other rules affecting the voting process. It will also establish a new federal Election Administration Commission and will require improvements to statewide voter registration databases and to some counties' voting equipment.

The good news is that the federal government plans to finance the required changes by appropriating money to be distributed to states either according to a formula or through a grant application process.

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Spanish Language Voting Materials Required in 6 Kansas Counties

For the first time, there are counties in Kansas who are required to provide ballots, voting materials and language assistance in a language other than English. County clerks in six counties—Finney, Ford, Grant, Haskell, Kearny and Seward—recently received letters from the U.S. Department of Justice informing them of their new duties. DOJ has enforcement powers over the Voting Rights Act.

Secretary of State Ron Thornburgh and members of his staff met with the county clerks and representatives of the Department of Justice in Liberal on August 22 to discuss plans for meeting the bilingual requirements.

Based on the results of the 2000 census, 30 states have at least one jurisdiction included in the multilingual requirements. Seven of the 30 states are included for the first time. Some jurisdictions are required to provide assistance in Chinese, Vietnamese, Japanese, Korean, various American Indian dialects (Pueblo, Sioux, Navajo, Apache, Chickasaw, Tohono O'odham, Yaqui, Yuman, Ute, Seminole Paiute, Shoshone and Choctaw), various dialects spoken in Alaska (Aleut, Eskimo and Athabaskan), and Filipino (Tagalog). Some meet the requirements in more than one language, and some of the American Indian dialects

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Federal Election Commission

Issues new voting standards

The Federal Election Commission issued new voting standards on April 30, 2002. The previous standards had been in place since 1990, and many changes in election technology, especially the increased reliance on software to tabulate votes, necessitated the revisions. Additionally, public attention has been focused on voting systems in the wake of the 2000 presidential election and the so-called “Florida experience.” The need and demand for updated standards have rarely, if ever been higher.

The release of the standards culminated a three-year effort involving many individuals and groups, including the FEC, the National Association of State Election Directors (NASED), the Election Center, independent testing authorities, manufacturers and vendors, and private experts. Doug Lewis, executive director of the Election Center, serves as the secretariat for the project. Much input was given by the NASSED Voting Systems Board, of which Johnson County Election Commissioner Connie Schmidt is a member.

The standards divide voting systems into two categories: paper ballot systems, which include optical scan ballots and punch cards; and direct recording electronic (DRE) systems, which are computerized systems with ballot information presented on a screen using push button or touch screen user interface.

Some of the issues addressed in the standards had only recently come to the public’s attention as a result of the 2000 election: disabled access, an easily understood voter interface to reduce voters’ errors, and clear ballot design (remember the “butterfly ballot” in Florida?).

Use of the standards is voluntary, although according to the FEC almost 80% of the states, including Kansas, have adopted these standards. Some have written laws requiring use of the standards, others have adopted regulations, and others like Kansas have adopted the standards because the secretary of state has made it a policy to use them in the voting equipment certification process. Most states have additional requirements—state testing and certification procedures, reviews to ensure compliance with state law, and approval by a NASSED independent testing authority (ITA).

Over the years NASSED has developed an ITA process where it identifies private companies to perform qualifications tests on voting system’s hardware and software. Companies who wish to become ITAs must be approved by NASSED. If approved, manufacturers seeking approval of their voting equipment must submit it to one or more ITAs for testing. The ITAs use the FEC voting standards to determine whether a given voting system qualifies. Once qualified, a system is given a NASSED qualification number. As the manufacturers and vendors seek approval among the various states, the NASSED qualification number is the basis for determining whether the system complies with federal standards.

As the FEC stated in the introduction to the new standards, “implementation of the original (1990) standards, combined with NASSED’s national testing program, has allowed election officials to be more confident than ever that the voting systems they procure will work accurately and reliably. Although the requirements for voting systems and the technologies used to build them have evolved over the past decade, the revised standards will close the gaps in the standards for system performance and testing.

“In order to prevent technology gaps in the future, the FEC and NASSED are committed to making the standards a living document capable of being updated in an expedited manner to respond to constantly evolving technology. Such technological innovation should be embraced in order to maintain a sophisticated and robust voting systems industry.”

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RON THORNBURGH

Kansas Secretary of State

Dear Friends,

By working together we once again pulled off the primary election despite historic challenges presented by redistricting and the lawsuit. We must now work towards a successful general election and to do this we must remember the importance of the voting rights act.

Some Kansas counties are facing a new challenge in providing access to polling places for Kansas citizens who speak English as a second language. I recently met with the county clerks and representatives from the Department of Justice in Liberal to discuss plans for meeting bilingual requirements. For the first time, six counties in Kansas – Finney, Ford, Grant, Haskell, Kearny and Seward – will be required by the Department of Justice to provide ballots, voting materials and language assistance in a language other than English. These counties are being required to provide these materials because they have more than five percent of voting age citizens who cannot speak or adequately understand English. For details on the meeting, refer to the story on page one of this issue.

This is not an issue of race, but of providing full access to democracy to all American citizens. Full access means they can understand and comprehend what they are voting on. We are all privileged to live in a country where we have the right to go to the polls and vote for our elected officials. Many Spanish speaking Americans are unable to take advantage of this right because of the language barrier. This effort doesn't have to be limited to the six counties mentioned above. I encourage the other 99 counties to do what you can for those in your communities for the general election.

Some ideas to consider: Use bilingual poll workers, voter outreach material and voter registration applications. The Secretary of State's office is working with the Kansas Advisory Committee on Hispanic Affairs to translate voting materials that will be available on our Web site.

I am excited about the opportunities before us in the coming year. The changes implemented through election reform allow us to fine tune the voting process and provide access to every American.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ron", written over a large, stylized capital letter "P".

RON THORNBURGH
Secretary of State

Congressional Redistricting Lawsuit Affects Primary Election Preparation

Lawsuits challenging censuses and redistricting plans are common. Many states are sued, some of them multiple times, in a given census/redistricting year. The timing of a lawsuit that challenged Kansas' new congressional district lines this year threatened the August 6 primary because it reduced the time to prepare and distribute ballots. In the end, the lawsuit was resolved quickly and the August 6 primary date was preserved.

The unusual feature of this lawsuit was that the state sued itself over its own district lines: the Attorney General sued the Secretary of State over district lines drawn by the Legislature. The SOS was the defendant because the plaintiff (the AG) sought a court order to prevent the SOS from conducting the election based on congressional district lines the AG claimed were unconstitutional. The claim of unconstitutionality was based on the idea of communities of interest; specifically, a district line between the 1st and 2nd congressional districts was drawn on the county boundary between Riley and Geary counties, and those counties considered themselves a single community of interest which should not be split, mostly due to the Fort Riley influence.

The lawsuit was filed on June 6, a mere two months before the primary election. The SOS was forced to retain private legal representation because, although the AG usually defends the SOS and other state government entities in court, in this case the AG was the plaintiff. The attorney hired by Secretary of State Ron Thornburgh worked closely with the SOS legal counsel and election staff to move the case forward quickly.

The case was heard by a three-judge panel in the federal district court in Topeka on Tuesday, July 2. The court issued its ruling on July 5 upholding the constitutionality of the congressional district lines and preserving the August 6 primary date. However, a number of rulings before and after the hearing date were issued by the court at the request of the Secretary of State to temporarily suspend certain state statutes, move deadlines and in general expedite the election preparation process.

Here is a summary of the court orders issued in the case:

- A June 14 order moved the candidate filing deadline for congressional candidates from noon on June 24 to 5:00 p.m. on July 9. Normally the deadline is noon on June 10, but a special law moves the deadline to June 24 in redistricting years if the Legislature does not complete the redistricting plan by June 10. This time, the court moved it even later, to July 9.

- A June 19 order moved the deadline for county election officers to mail federal services ballots from June 21 to July 12, shortening the federal services voting period from the normal 45 days to 30 days.

- The June 19 order also moved the beginning of advance voting from July 17 to July 24, shortening the 20 day period to 13 days.

- A July 10 order moved the deadline for federal services ballots to be received in the county election office from election day to 6 days later, on August 12. Normally, under Kansas law all ballots of any type must be received by the close of polls on election day or they're deemed invalid. In this case the federal services deadline was extended 6 days past election day to preserve the 30-day voting period prescribed by the Federal Voting Assistance Program, which oversees federal services voting.

The lawsuit greatly reduced preparation time for the election, threatened to move the primary date, caused confusion among candidates and voters, and generally disrupted the normal flow of activities leading up to the election. In the end the election was conducted on time, candidates had adequate opportunity to file, and voters had an opportunity to vote in the primary and nominate the candidates of their choice.

Because of this shortage of time, much of the communication between the Secretary of State's office and county election offices had to be by e-mail, fax and phone. Even so, there was often not enough time to adequately plan and prepare. County election officers are to be commended for their patience during the process and for their diligence in working through the complexities of conducting the primary in a redistricting year with reduced preparation time.

New County Clerk in Republic County

Vickie Hall took over as Republic County clerk on July 22, 2002. Vickie succeeds longtime clerk Sharon Rundus who was killed in a car accident on June 24, 2002.

A county party district convention was held in July to select Sharon's replacement, and Vickie's name was submitted by the convention to the Governor for official appointment.

Vickie has nearly 29 years of experience in the county clerk's office, having begun her employment there in 1974.

Vickie is married to Gerold Hall and has two sons, Jason and Greg, who are grown and married. She spends a lot of her free time on antiques, quilts and church work. Also, one of her hobbies reportedly is keeping track of her four grandchildren.

We want to extend to Vickie our congratulations on her appointment and best wishes in carrying out her new duties. Welcome aboard, Vickie!

Voting

From page 1

do not have a written language, which complicates matters further.

How are the counties selected?

After each decennial census, the director of the U.S. Bureau of the Census issues federal regulations designating jurisdictions that are required to provide ballots and other voting materials in languages other than English.

Section 203 of the Voting Rights Act of 1965 establishes the criteria. A jurisdiction must provide multilingual assistance to voters if: (1) more than 5% of the voting age citizens are members of a single-language minority group who do not speak or understand English adequately enough to participate in the electoral process, or (2) if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade. Completion of the fifth grade is a benchmark for literacy. The six Kansas counties are included because they have Hispanic populations meeting these criteria, so they are required to provide assistance in Spanish.

What materials are required to be provided in Spanish?

The plan includes providing the following materials in Spanish to those voters who need them: ballots, voter instructions, Voter's Rights and Responsibilities posters, the voter registration application form, advance voting forms, voter outreach

materials, publications of voter registration and notices of elections, candidate filing forms, petitions, confirmation notices and notices of disposition. Other materials could be added later as the need arises.

What oral language services are required?

County election officers in the affected counties will need to provide interpreters at polling places meeting the criteria for inclusion, interpreters to assist the CEO in processing voter registration applications and other materials, and language assistance at voter registration agencies.

What is the role of the Secretary of State?

The Secretary of State's office will coordinate with the Kansas Advisory Committee on Hispanic Affairs to translate most of the printed materials into Spanish. The materials will be made available to the affected counties for duplication or printing.

The SOS will also act as liaison between the Department of Justice and the county election officers to see that requirements of the program are met.

What is the role of the county election officers?

The county election officers will print ballots and other materials in Spanish as well as English. They will need to establish contacts with local minority language media and associations that can identify translators to work on election day and to provide translation services as needed throughout the year.

All future voter outreach programs and planning for election day activities must include a component to satisfy the bilingual requirements.

After Lawsuit, Primary Election Somewhat Uneventful

The August 6 primary election went smoothly, once the legal wrangling over congressional redistricting was over and the decision was made not to move the date of the primary (See article on the lawsuit elsewhere in this newsletter.)

Preparations for the primary in every county were on hold due to the redistricting lawsuit, and the court's order resolving the matter on July 5 left just over a month to prepare for the primary. Preparations included reassigning voters and precincts to the correct districts, a normal task performed in redistricting years that was compressed into a short time due to the lawsuit.

The changes wrought by redistricting were in addition to the normal tasks of printing ballots, appointing and training precinct election board workers, and testing equipment.

Turnout

Statewide, voter turnout was disappointing but slightly better than anticipated. On the Friday before the primary election, Secretary of State Ron Thornburgh had predicted 381,000 voters would cast ballots in the primary, which would have been 24% of the 1,588,859 voters registered as of the registration deadline on July 22. The unofficial turnout figure after the votes were counted is 403,000, which is slightly more than 25% of all registered voters.

Turnout percentages for primaries are always lower than for general elections because not all registered voters are allowed to vote in the primary. Voters affiliated with third parties are

excluded from Kansas' closed primary, and unaffiliated voters may vote only if they declare a party at the poll.

The low turnout was caused partly by the lack of competitive races. Many legislative candidates and some candidates for statewide office had no primary opposition within their parties. The Democratic Party especially had few contested races.

Some counties and local jurisdictions had special questions on their ballots which generated interest locally, but there were none with statewide or even regional impact.

Election Night Tabulation

County election officers were once again asked to report their unofficial election night results for state and national races, and the process went very well. Most of the counties' results were final well before midnight, and except for a few counties with equipment malfunctions everything was finished by the early morning hours. The last two people in the SOS elections division left the office for a few hours of sleep at 2:30, which is several hours before the usual time.

Each county election officer chose from three options to report: 20 counties reported by phone, 45 by fax, and 40 electronically via the Internet.

The earliest partial results were reported by Shawnee County, and the first county to report its final results was Wichita County.

Please see **Lawsuit**, page 6

Constitution Party Loses Official Recognition

In a June 25, 2002 letter to Cedric Boehr, state chairman of the Kansas Constitution Party, Secretary of State Ron Thornburgh officially ended the party's status as a recognized political party in Kansas.

At the same time, Thornburgh's office sent notice to each county election officer, directing them to change the status of registered voters previously affiliated with the Constitution Party to unaffiliated. Voter registration application forms, party affiliation lists and other documents are being revised to reflect the removal of the party.

The Constitution Party originally obtained official recognition in 1998 as the Taxpayers Party by submitting a petition containing the statutorily-required number of signatures: 2% of the total votes cast for all candidates for the office of governor in the last general election. At the time the petition was submitted, the signature requirement was nearly 15,000.

Once a party is recognized, it must comply with two requirements outlined in K.S.A. 25-302 to maintain its official status: it must nominate a candidate for at least one statewide office in each election, and any such candidate for statewide office must receive at least 1% of the vote in the general election.

Third parties nominate their candidates for all offices at state conventions. They are required by law to send a certificate of nomination to the Secretary of State detailing the names and addresses of all nominees. The deadline for the certificate is noon on June 10, the same as the candidate filing deadline for the primary election.

The Constitution Party failed to file a certificate of nomination this year, which meant they had no nominees for statewide offices, so they had not complied with the requirements of K.S.A. 25-302. That was the basis of the Secretary of State's decision.

So, That's What "Motor-Voter" Means!

Ingenuity saved the day in a Saline County precinct last August 6. When the election board members arrived at the VFW Post in Salina at 6:30 am to prepare for the opening of the poll at 7:00, they discovered the site was a crime scene.

A break-in had occurred during the night, and the election board was barred from entering the premises. Because the VFW Post was the regular published polling place and voters were expecting to vote there, viable options were limited.

Frances Langshaw, the supervising judge with 40 years of experience working elections, solved the problem by driving her station wagon into position, posting a "Vote Here" sign in the window, and operating the polling place from the car for the next four hours, during which time 27 voters cast their ballots and none were turned away.

According to Langshaw, the poll book was on the hood, ballots and other supplies in the front seat, the tailgate was voting booth #1, and the back seat was voting booth #2.

Also working the election were Virginia Garrelts, who has 40 years of election experience, and Richart Gartner, who was working his first election.

Saline County Clerk Don Merriman

said this was the first time they really understood what the phrase "motor voter" means!

As all election officers know, things don't always go exactly according to plan on election day, despite the best preparations. Emergencies can and often do occur, whether they're natural or man-made disasters, equipment malfunctions, or human error. There are times when a conscientious public servant such as an election board worker must make the best of a bad situation, as Frances Langshaw did last August 6.

The Saline County board of county commissioners presented Langshaw with a certificate of commendation for her efforts above and beyond the normal call of duty.

We have heard of tailgating at football games, but not tailgating at an election!

Reform

From page 1

The outcome of election reform efforts is uncertain as of this writing. However, there is a sense of urgency among members of Congress and widespread desire to get a bill passed. The next month or two will tell us whether the political will was strong enough to pass a bill.

Lawsuit

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County Canvasses

For the first time this year, county election officers had the option of moving the county canvass from Friday to Monday after the election. A new law passed this year allows the canvass to be held Monday if a notice is published once in a newspaper with general circulation in the county.

The main purpose of the legislation was to allow more time to process provisional ballots between election day and the canvass, but it also has two other potential benefits: it allows flexibility when the Friday after the election is a holiday, as sometimes happens with Veterans Day, and it is more convenient for canvassers because many boards of commissioners, who serve as the canvassers in each county, have regular meetings on Monday. Friday is not a normal meeting date for many commissioners.

On to the General Election

The state canvass of the election was held August 30 and certificates of nomination were issued by the elections division. Official candidate lists for the general election were immediately made available on the SOS web site at www.kssos.org, and printed copies were mailed to the county election officers. Preparations are underway for the federal services ballot distribution deadline September 20 and the beginning of advance voting on October 16.

Canvassing Kansas